IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2397 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VINODCHANDRA N JOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2397 of 2001

MR NS DESAI for Petitioner No. 1

Mr A D Oza, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/06/2001

C A V JUDGEMENT

Rule.

Heard the learned Advocate for the petitioner and the learned Public Prosecutor for the State. This case is almost on par with the case in Misc.Criminal Application No.4065/2001 and others, except that the petitioner herein is said to be a Civil Engineer, whereas the petitioners in the above case are stated to be the builders.

2. In view of the decision taken by this Court in a group of matters i.e. Criminal Misc.Application No.4065/2001 and others, and considering the fact that the petitioner is stated to be a Civil Engineer, and considering the allegations made in the charge-sheet against him, this application is allowed and the petitioner is ordered to be released on bail in connection with C.R. No.I. 20/2001 of Ghatlodia Police station on his executing personal bond in the sum of Rs.25,000/- (Rs. Twenty five thousand only) with one surety of the like amount to the satisfaction of the lower court and subject to the following conditions provided he is not required in judicial custody for any other case.

(a) The petitioners shall not leave Ahmedabad City and Ahmedabad Rural District till completion and conclusion of the entire investigation and till the submission of final charge-sheet against all the accused persons, and till the apprehension and arrest of all the accused persons involved in the respective cases without the express permission of the learned Addl. Sessions Judge, Ahmedabad (Rural)).

(b) The petitioners shall not approach, contact, induct or threaten the witnesses connected with the offence in question.

(c) The petitioners shall file an affidavit before the learned Addl. Sessions Judge, Ahmedabad (Rural), showing the place of their residence after their release on bail which would contain details about full address and telephone numbers, if any.

(d) The petitioners shall personally remain present on every 1st working day of the month according to British Calendar before the learned Addl. Sessions Judge, Ahmedabad (Rural) between 2 pm and 5 pm.and mark their presence there. The learned Addl. Sessions Judge shall make

appropriate arrangements for obtaining their signatures on their appearance.

(e) The petitioner shall not leave Gujarat State without prior permission of the learned Addl. Sessions Judge, Ahmedabad (Rural).

(f) The petitioner shall not leave the revenue district of the place of residence stated by them in their affidavit without the permission of the learned Addl. Sessions Judge, Ahmedabad (Rural).

(g) Petitioner shall deposit their passports, if any, before the concerned police station before their release on bail. In case the petitioner does not hold any passport, then in that case, he shall file an affidavit before the learned Addl. Sessions Judge, Ahmedabad (Rural) accordingly.

(h) The learned Addl. Sessions Judge, Ahmedabad (Rural) shall write Yadi to the Passport Office, Ahmedabad with respect to the aforesaid conditions imposed upon the petitioner restricting his movement and that he has not been permitted to visit abroad, for their information and action.

(i) The petitioner, before his release on bail as aforesaid, shall deposit a sum of Rs.25,000/(Rs. Twenty five thousand only) before the learned Addl. Sessions Judge, Ahmedabad (Rural) for the due performance of the aforesaid conditions by the petitioner. The learned Addl. Sessions Judge, Ahmedabad (Rural) will be at liberty to place the said amount in FDR in the name of his Court at the instance of the petitioner.

If any one or more conditions is/are reported to have been breached by the petitioner the learned Addl. Sessions Judge, Ahmedabad (Rural), shall be at liberty to issue non-bailable warrant against the petitioner.

Bail bond shall be executed before the learned Addl. Sessions Judge, Ahmedabad (Rural).

Rule is made absolute accordingly. D.S. permitted.

29.6.2001 [D P Buch, J.]
msp

COMMON FURTHER ORDER in Crim.Misc.Application 2397/2001 and Cr.Misc.Application No.4065/2001 & Ors.

After pronouncement of the orders in all these matters, learned Public Prosecutor Mr A D Oza, appearing for the State has made a submission that the aforesaid orders releasing the petitioners on bail may be suspended for at least three weeks in order to enable the State to file appropriate proceedings before the higher forum. As against this, learned Advocate for the petitioners have strongly objected to it. Mr Saurin Shah, arguing for the petitioners has argued that the Court has considered the pros and cons on merits and thereafter, the decision has been recorded and the petitioners have been ordered to be enlarged on bail. That therefore, if this court now suspends its order, it would amount to reviewing its order, which is not technically permissible under the law, since the criminal law does not provide for review of the order of the Court. Mr A J Patel, learned Advocate, appearing in a similar matter, has also contended that there is no reason for suspending the order of the Court. It is also his submission that even if there is discretion in the court for suspension of its order, it may not be used in favour of the State. Mr Saurin Shah also argued that once the order is pronounced, it need not be stayed. Mr N S Desai, learned Advocate appearing in a similar matter also argued that the matter has been disposed of on merit and so far as his client is concerned, he is also sick. That, he has also prayed for bail on the ground of sickness of the petitioner and, therefore, the order should not be stayed.

As against this, learned Public Prosecutor has relied upon a decision of this Court in the case of State of Gujarat v. Lalji Popat, reported in 1988 (2) GLR 1073. On the basis of the said decision, it has been contended that when a court passes an order for enlargement of the accused persons on bail and if the State desires to file appropriate proceedings before the higher forum, then, the State can make a submission for the suspension of the order and the Court ordering the release of the accused persons on bail should consider the said request of the State for suspending the operation of the order passed. Therefore, there is a case law coming from this Court that the Court passing order for enlargement of the accused on bail can and should suspend its order in case necessity. Mr A D Oza

has also argued on behalf of the State that some builders have yet not had apprehended and they have been found absconding. It has also been argued by him that some pressures are brought on the occupants of the flats for settlement of their dispute with a view to avoid trial, arrest etc. on criminal side against them. It is also contended that other persons have also been absconding since last so many months and in that view of the matter, with a view to avoid any such pressure tactics and with a view to avoid any further complication, the prayer is that the order releasing the petitioners on bail be suspended at least for three weeks so that during the said period, the State can move appropriate forum for appropriate relief.

Having regard to the aforesaid submissions made

considering the aforesaid case law, I am of the view that though the petitioners are in jail for about 4 months, it would be just and proper to give some time even to the State for taking appropriate steps before appropriate authority. Time is sought for a period of three weeks praying to suspend the order as aforesaid upto 20.7.2001. Accordingly time is granted upto 12.7.2001. Naturally, if no order is received from or passed by the superior forum, the aforesaid order will be operative with effect from 13.7.2001.

29.6.2001 [D P Buch, J.]
msp